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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY, DOCKET NO.
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09/492,558 01/27/00 GANNOE

QM32/0604

EXAMINER
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ART UNIT	PAPER NUMBER
3732	7

DATE MAILED: 06/04/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/492,558	GANNOE ET AL.	
	Examiner	Art Unit	
	Pedro Philogene	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 April 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 20-48 is/are withdrawn from consideration.
- 5) Claim(s) 4 and 5 is/are allowed.
- 6) Claim(s) 1-3 and 6-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- | | |
|---|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 20) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Applicant's election without traverse of claims 1-19 in Paper No. 05 is acknowledged.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6, 10, 11, 16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Although applicant is claiming a second foot, applicant fails to disclose a second foot attached to the shaft.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, line 4, the term "the foot" lacks prior antecedent basis.

In claim 10, line 3, the term "the first foot" lacks prior antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1,2,3, 17-19, are rejected under 35 U.S.C. 102(e) as being anticipated by Farascioni (5,976,080).

With respect to claims 1-3, Farascioni discloses an apparatus for stabilizing an epicardial surface of the heart comprising a shaft (110); and a foot (102) coupled to the shaft, the foot having a first arm (104a), a second arm (104b) and a space between the first and the second arms, the first and second arms each having a contact surface for engaging the heart, a proximal end, an distal end and a length defined between the proximal and distal ends, the length of the first arm being longer than the length of the second arm; as best seen in Fig.17,18.

With respect to claims 2 and 3, Farascinio discloses all the limitations, as set forth.

With respect to claims 17-19, the method steps, as set forth would have been inherently carried out in the operation of the device, as set forth above.

Claims 7-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Looney et al (6,152,874).

With respect to claim 7, Looney et al disclose an apparatus for stabilizing an epicardial surface of the heart comprising an arm (40); and a foot (20) coupled to the arm, the foot having a contact surface for engaging the heart, and a slot in which a

vessel on the heart may be positioned, the slot defining an axis, wherein the foot is attached to the arm (40) at a location offset from the axis; as best seen in Fig.12.

With respect to claims 8-11, Looney et al disclose all the limitations, as set forth.

With respect to claim 12, Looney et al disclose an apparatus for stabilizing an epicardial surface of the heart comprising an arm (40); and a first foot (20) including a bottom surface having a contact surface for engaging the heart, a slot in which a vessel on the heart may be positioned, wherein at least a portion of the bottom surface is convex; as best seen in Fig.14.

With respect to claims 13-16, Looney et al disclose all the limitations, as set forth.

Allowable Subject Matter

Claims 4,5 are allowed.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "90" has been used to designate both carriage and proximal portion. Correction is required.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6,231,506 5-2001 Hu et al.

6,213,940 4-2001 Sherts et al.

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6,102,854

8-2000

Cartier et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 305-3591 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Pedro Philogene
May 30, 2001

Pedro Philogene
PEDRO PHILOGENE
PRIMARY EXAMINER